



**MARKET CONDUCT EXAMINATION REPORT  
DATED JULY 8, 2011**

**COVERING THE TIME PERIOD OF JANUARY 1, 2009 THROUGH  
DECEMBER 31, 2009**

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**FIRST AMERICAN TITLE INSURANCE COMPANY**

**1 First American Way  
Santa Ana, California 92707**

**NAIC Company Code 50814  
NAIC Group Code N/A**



**CONDUCTED BY:**

**COLORADO DIVISION OF INSURANCE**

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**FIRST AMERICAN TITLE INSURANCE COMPANY  
1 First American Way  
Santa Ana, California 92707**

**MARKET CONDUCT  
EXAMINATION REPORT  
DATED JULY 8, 2011**

**COVERING THE TIME PERIOD OF JANUARY 1, 2009 THROUGH DECEMBER 31, 2009**

**Examination Performed by:**

**State Market Conduct Examiners**

**Christine M. Nelson  
Market Conduct Examiner**

**And**

**Jeffory A. Olson, CIE, MCM, FLMI, AIRC, ALHC  
Examiner-In-Charge**

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**COMPANY PROFILE**

**The following is taken directly from written documentation provided by First American and has not been independently verified by the Division:**

First American Title Insurance Company, a California domiciled title insurer, was formed under the laws of the State of California on September 24, 1968. On March 16, 1977, the Colorado Division of Insurance (the "Division") issued a Certificate of Authority, First American's license to write title insurance in the State of Colorado. Between 1977 and 2008, First American operated mainly through its network of agents. In 2008, with the sale of Mercury Companies, First American turned its focus to, and began, its direct operations. Today, First American operates both a direct and agency business in Colorado.

Through direct operations and a network of carefully selected agents, First American issues title insurance policies and related escrow services in forty-nine (49) states that permit the issuance of title insurance policies, and the District of Columbia. In addition to a comprehensive presence across the United States, First American also offers title insurance and similar products, either directly or through joint ventures, in foreign countries, including Canada, the United Kingdom and various other established and emerging markets.

**Premium and Market Share as of December 31, 2009:**

<b><u>Direct Premium Earned:</u></b>	\$16,397,000*
<b><u>Market Share:</u></b>	8.09%*
<b><u>Loss Ratio:</u></b>	64.20%*

\*As shown in the 2009 Edition of the Colorado Insurance Industry Statistical Report

A.M. Best has currently assigned a Financial Strength Rating of A- to First American.

**PURPOSE AND SCOPE**

State market conduct examiners, with the Colorado Division of Insurance (“Division”), reviewed certain business practices of First American. This market conduct examination was performed in accordance with Colorado insurance laws, §§ 10-1-201, 10-1-203, 10-1-204, 10-1-205 and 10-3-1106, C.R.S., which empower the Commissioner to examine any entity engaged in the business of insurance in Colorado. All work product developed in producing this report is the sole property of the Division.

The purpose of the examination was to determine First American’s compliance with Colorado insurance laws related to title insurance business in Colorado. Examination information contained in this report will serve only this purpose, except as otherwise provided by law pursuant to §§ 10-1-204 and 205, C.R.S. The findings and conclusions, including the Final Agency Order arising out of this examination shall be a public record.

Examiners conducted the examination in accordance with procedures developed by the Division, based on model procedures developed by the National Association of Insurance Commissioners. The examiners relied primarily on records and materials maintained and/or supplied by First American and its agents. The market conduct examination covered the period from January 1, 2009, through December 31, 2009.

The examination included review of the following areas:

- Company Operations and Management
- Advertising, Marketing and Sales
- Producers/Agents
- Underwriting: Applications, Forms and Rates
- Claims
- Escrow, Closing and Settlement Services

The final examination report is a report written by exception. References to additional practices, procedures, or files that did not contain improprieties were omitted. Based on review of the above areas, comment forms were prepared by the examiners and provided to First American. The comment forms set forth any concerns and/or discrepancies identified by the examiners during the course of the examination. The comment forms contain a section that permits First American to submit a written response to each of the examiners’ comments.

For the period under examination, the examiners included statutory citations and regulatory references related to insurance laws as they pertained to insurance companies and producers. Examination findings may result in administrative action by the Division. The examiners may not have discovered all unacceptable or non-complying practices of First American. Failure to identify specific company practices does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any insurance company or insurance company product.

## **METHODOLOGY**

The examiners reviewed First American’s business practices to determine compliance with Colorado insurance law as outlined below.

<b>Statute or Regulation</b>	<b>Subject</b>
Section 10-1-128, C.R.S.	Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration.
Section 10-2-401, C.R.S.	License required.
Section 10-2-406, C.R.S.	Licensing of agencies.
Section 10-2-702, C.R.S.	Commissions.
Section 10-2-704, C.R.S.	Fiduciary responsibilities.
Section 10-3-1104, C.R.S.	Unfair methods of competition - unfair or deceptive acts or practices.
Section 10-11-102, C.R.S.	Definitions.
Section 10-11-103, C.R.S.	Compliance with article required.
Section 10-11-106, C.R.S.	Determination of insurability required.
Section 10-11-108, C.R.S.	Prohibitions.
Section 10-11-109, C.R.S.	Unearned premium reserve.
Section 10-11-110, C.R.S.	Amount of unearned premium reserve-release.
Section 10-11-111, C.R.S.	Reserve for unpaid losses and loss expense.
Section 10-11-116, C.R.S.	Title insurance agents licensed.
Section 10-11-118, C.R.S.	Title insurance-rules.
Section 10-11-119, C.R.S.	Laws applicable.
Section 10-11-121, C.R.S.	Application of article-other laws applicable.
Section 10-11-122, C.R.S.	Title commitments.
Section 10-11-123, C.R.S.	Notification of severed mineral estates.
Section 10-11-124, C.R.S.	Affiliated business arrangements – rules – investigative information shared with division of real estate.
Insurance Regulation 1-1-7	Market Conduct Record Retention
Insurance Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Requests
Insurance Regulation 3-5-1	Concerning Title Insurance
Insurance Regulation 6-4-1	Privacy of Consumer Financial and Health Information

### **Sampling Methodology**

In accordance with the sampling methodology and sample sizes as set forth in the 2010 NAIC Market Regulation Handbook (“Handbook”), the examiners reviewed all files that were randomly selected to constitute the sample base from a larger population of files. These random samples consisted of two (2) unique populations, one (1) sample for First American’s policy population, and one (1) sample for First American’s claims population. First American produced twelve (12) invalid policy files and three (3) invalid claims files in the original samples. The files were considered invalid as they were from years outside the 2009 exam period. The invalid files were replaced with files from a supplemental sample selected on a random basis from the applicable populations to which the invalid files belonged.

When sampling was involved, a minimum error tolerance level of seven percent (7%) for claims, and ten percent (10%) for policy samples, was established, per the Handbook, to determine reportable exceptions.

**Audits and Examinations**

First American was the subject of two (2) previous Colorado market conduct examinations that were completed in September 1999 and January 2004, and covered calendar years 1997 and 2002.

**Company Operations and Management**

The examiners reviewed First American's management and administrative controls, agent oversight, the Certificate of Authority, record retention, underwriting guidelines, and timely cooperation with the examination process. The examiners also reviewed First American's disaster recovery plan and its anti-fraud plan's implementation and associated procedures.

**Advertising, Marketing and Sales**

As part of the examination First American was to provide documentation of all promotional and advertising materials and activities utilized by First American or its agents during the period of examination.

The examiners reviewed First American's advertising procedures. First American did not provide any information or documents with respect to its agents advertising, marketing and sales practices.

**Producers/Agents**

First American provided a listing of forty (40) title agents that were active during the examination period. The examiners selected all forty (40) agents to review for agent contracting and licensing.

**Contract Forms**

First American provided specimen copies of forms made available for use in Colorado. The examiners reviewed each of the provided forms as listed below:

<b><u>Policies</u></b>	<b><u>Form No. or Date</u></b>
1. Owner's Policy (Former ALTA 1970)	
A. Policy Jacket	1402.70 (10-17-70)
B. Schedule A	1402.70-A
C. Schedule B	1402.70-B
D. Schedule C	1056-4
2. Owner's Policy (Former ALTA 1970 Revised 10-17-92)	
A. Policy Jacket	1402.70.92 (10-17-92)
B. Schedule A	1402.70-A
C. Schedule B	1402.70-B
D. Schedule C	1056-4
3. ALTA Owner's Policy (1992)	
A. Policy Jacket	1402.92 (10-17-92)
B. Schedule A	1402-A (6/87)

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	C. Schedule B	1402-B (6/87)
4.	ALTA Owner's Policy (2006)	
	A. Policy Jacket	1402.06 (6/17/06)
	B. Schedule A	1402.06.A (6/17/06)
	C. Schedule B	1402.06.B (6/17/06)
5.	ALTA Plain Language Policy (1-4 Family Residence)	
	A. Policy Jacket	1341.87 (6/87)
	B. Owner's Information Sheet	1340 (6/87)
	C. Schedule A	1341-A (6/87)
	D. Schedule B	1341-B (6/87)
6.	ALTA U.S. Policy 1963	
	A. Policy Jacket	1037.66 (1/66)
	B. Schedule A	1037 U.S. Policy- Schedule A
	C. Schedule B	1037 U.S. Policy- Schedule B
7.	ALTA U.S. Policy 1991	
	A. Policy Jacket	1037.91 (Rev. 9/28/91)
	B. Schedule A	Form 1037 U.S. Policy- Schedule A
	C. Schedule B	Form 1037 U.S. Policy- Schedule B
8.	Loan Policy (Former ALTA 1970)	
	A. Policy Jacket	1056.70 (10-17-70)
	B. Schedule A	1056.70-A
	C. Schedule B-1	1056.70-B1
	D. Schedule B-2	1056.70-B2
	E. Schedule C	1056-4
9.	Loan Policy (Former ALTA 1970 Revised 10-17-92)	
	A. Policy Jacket	1056.70-92 (10-17-92)
	B. Schedule A	1056.70-A
	C. Schedule B-1	1056.70-B1
	D. Schedule B-2	1056.70-B2
	E. Schedule C	1056.-4
10.	ALTA Loan Policy (1992)	
	A. Policy Jacket	1056.92 (10-17-92)
	B. Schedule A	1056-A (6/87)
	C. Schedule B-1	1056-B1 (6/87)
	D. Schedule B-2	1056-B2 (6/87)

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- |     |   |                     |
|-----|---|---------------------|
| 11. | ALTA Loan Policy (2006)                               |                     |
|     | A. Policy Jacket                                      | 1056.06 (6/17/06)   |
|     | B. Schedule A   | 1056.06.A (6/17/06) |
|     | C. Schedule B   | 1056.06.B (6/17/06) |
| 12. | ALTA Master Residential Loan Policy                   |                     |
|     | A. Schedule A & B                                     | 1057 (4-6-90)       |
|     | B. Certificate  | 1057-Cert (4/6/90)  |
|     | C. Addendum   | 1057-Add            |
| 13. | ALTA Short Form Residential Loan Policy (1992)        |                     |
|     | A. Schedule A   | 1058.92 (10-17-92)  |
|     | B. Addendum   | 1058-Add (10-9-90)  |
| 14. | ALTA Short Form Residential Loan Policy (REV 6-16-07) |                     |
|     | A. Schedule A   | 1058.08C (6/16/07)  |
|     | B. Addendum   | 1058-Addendum       |

**Guarantees**

- |    |                                |                                 |
|----|--------------------------------|---------------------------------|
| 1. | Subdivision Guarantee          |                                 |
|    | A. Cover                       | 110-1282 (3/31/04)              |
|    | B. Guarantee                   | 1359 (4/75)                     |
| 2. | Litigation Guarantee           |                                 |
|    | A. Cover                       | 110-1282 (3/31/04)              |
|    | B. Guarantee                   | 1283 (7/96)                     |
|    | C. Guarantee, Schedule A       | 1283-A (7/96)                   |
|    | D. Guarantee, Schedule B       | 1283-B (7/96)                   |
|    | E. Guarantee, Schedule C       | 1283-C (6/92)                   |
| 3. | Public Trustees Sale Guarantee |                                 |
|    | A. Cover                       | 110-1282 (3/31/04)              |
|    | B. Guarantee Part 1            | 1298-1 Colorado                 |
|    | C. Guarantee Part 2            | 1298-2 Colorado                 |
|    | D. Information for Insured     | 1298-3 Colorado                 |
| 4. | Foreclosure Guarantee          |                                 |
|    | A. Cover                       | 110-1282 (3/31/04)              |
|    | B. Guarantee Part 1            | 1255-Part I Colorado<br>(6/89)  |
|    | C. Information for Assured     | 1255-Part II Colorado<br>(5/99) |
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	D. Information For Assured	1255-Part II (BK) Colo (2/00)
5.	Title Guarantee	
	A. Cover	110-1282 (3/31/04)
	B. Guarantee	1831-1 (CO-88)
	C. Schedule A	1831-2 (CO-88)
	D. Schedule B	1831-3 (CO-88)
6.	Chain of Title Guarantee	
	A. Cover	110-1282 (3/31/04)
	B. Face Page	1349 (12/15/95)
	C. Schedule A	1350 (6/6/92)
7.	Mortgage Guarantee	
	A. Cover	110-1282 (3/31/04)
	B. Guarantee	1830-1 (CO-88)
	C. Guarantee Part 2	1830-2 (CO-88)
	D. Exceptions	1830-3 (CO-88)
	E. Addendum to Mortgage Guarantee Revolving Credit	1830-4 (CO-95)
8.	Mortgage Priority Guarantee	
	A. Cover	1640 (2/92)
	B. Face Page	1640-1 (1/92) OR,
	C. Face Page	1640-2 (6/93)
9.	Recorded Document Guarantee	
	A. 1832 pages 1-5 (CO-90) Rev. 5/90	
10.	Improvement and Special District Guarantee	
	A. Cover	110-1282 (3/31/04)
	B. Guarantee	CO-2000 (3/92)
	C. Information for Assured	CO-2000 (3/92)
11.	Judgment and Tax Lien Guarantee	
	A. Cover	110-1282 (3/31/04)
	B. Guarantee	1353-1-CO (12/1/92)
	C. Schedule A	1353-2-CO (12/1/92)

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**Rates**

First American provided copies of its rate filings with effective dates of May 5, 2008, February 9, 2009, February 15, 2009, July 27, 2009, and October 14, 2009. The examiners reviewed actual charges to Colorado residents during the file review process set forth in the New Business section.

**New Business**

The examiners reviewed a random sample of 116 title policy files from a total population of 18,984 title policies issued by First American's agents and direct operations during 2009.

**Claim Handling**

The examiners reviewed a random sample of 107 claim files from a total population of 1,818 claims received by First American during 2009.

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**EXAMINATION REPORT SUMMARY**

The examination resulted in a total of twenty (20) findings in which First American was not in compliance with Colorado statutes and regulations. The following is a summary of the examiners' findings.

**Company Operations and Management:** The examiner identified five (5) areas of concern during the review of First American's Operations and Management:

**Issue A1: Failure to provide an anti-fraud statement as required by Colorado insurance law.** *(The examiners find this to be a repeat of prior issue A in the findings of the market conduct examination report for calendar year 2002.)*

**Issue A2: Failure to adopt and implement reasonable standards for claims processing.**

**Issue A3: Failure to require its agents to retain adequate documentation and records in its title underwriting files.**

**Issue A4: Failure to provide adequate agent oversight of privacy protection policy.**

**Issue A5: Failure, in some instances, to ensure producers were duly licensed prior to transacting business on behalf of First American resulting in the transaction of unauthorized insurance, and/or failure to maintain adequate licensing records.**

**Rates:** The examiner identified one (1) area of concern during the review of Rates:

**Issue F1: Failure, in some instances, to charge rates in accordance with the rates on file with the Commissioner.** *(The examiners find this to be a repeat of prior issue B in the findings of the market conduct examination report for calendar year 2002.)*

**New Business:** The examiner identified twelve (12) areas of concern during the review of New Business:

**Issue G1: Failure, in some instances, to conduct, preserve and retain in title files a reasonable examination of the title.**

**Issue G2: Failure, in some instances, to obtain a certificate of taxes due or written instructions eliminating the requirement from the proposed insured.**

**Issue G3: Failure, in some instances, to provide evidence of the special taxing district disclosure.**

**Issue G4: Failure, in some instances, to provide evidence that the Gap disclosure had been provided.**

**Issue G5: Failure, in some instances, to provide evidence that the severed mineral estate disclosure had been provided.**

**Issue G6: Failure, in some instances, to provide evidence that the mechanic's lien disclosure had been provided.**

**Issue G7: Failure, in some instances, to provide evidence that the privacy disclosure had been provided.**

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**Issue G8: Failure, in some instances, to provide evidence of an update of the title commitment, when First American's agent or direct operation provided closing and settlement services, in conjunction with the issuance of an owner's policy of title insurance.**

**Issue G9: Failure, in some instances, to provide evidence of written instructions, from all necessary parties, when First American's agent or direct operation provided closing and settlement services.**

**Issue G10: Failure, in some instances, to require the agents to remit premiums within the required contractual time period.**

**Issue G11: Failure, in some instances, to report to the Commissioner any remittance that exceeded forty-five (45) days beyond the contractual due date.**

**Issue G12: Failure, in some instances, to maintain and provide records required for a market conduct examination.**

**Claims:** The examiner identified two (2) areas of concern during the review of Claims:

**Issue J1: Failure, in some instances, to include the initial date of receipt, date-stamped by the insurer on documents in claims files as required for a market conduct examination.**

**Issue J2: Failure, in some instances, to maintain and provide claim records required for a market conduct examination.**

A copy of the Market Conduct Report, if adopted pursuant to § 10-1-205(3)(a), C.R.S., and any subsequent response filed by the Company if applicable, can be obtained upon request from the Division.

Results of previous market conduct examinations are available on the Division's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Division.

**FIRST AMERICAN TITLE INSURANCE COMPANY**

**FACTUAL FINDINGS**

**COMPANY OPERATIONS AND MANAGEMENT**

**Issue A1: Failure to provide an anti-fraud statement as required by Colorado insurance law.** *(The examiners find this to be a repeat of prior issue A in the findings of the market conduct examination report for calendar year 2002.)*

Section 10-1-102, C.R.S., Definitions, states in part:

...

- (6)(a) “Company”, “corporation”, “insurance company”, or “insurance corporation” includes all corporations, associations, partnerships, or individuals engaged as insurers in the business of insurance, including the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange, or suretyship except fraternal or benevolent orders and societies.

...

- (12) “Insurance” means a contract whereby one, for consideration, undertakes to indemnify another or to pay a specified or ascertainable amount or benefit upon determinable risk contingencies, and includes annuities.
- (13) “Insurer” means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance.

Section 10-1-128, C.R.S., Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration, states in part:

...

- (6)(a) Each insurance company *shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company*, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy or claim form substantially the same as the following: [Emphasis added.]

**“It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.”** [Emphasis in original.]

First American was not in compliance with Colorado insurance law in that it did not utilize or provide a statement of anti-fraud on its title insurance policy, application or claim forms.



**Recommendation No. 1:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of § 10-1-128, C.R.S. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has revised all relevant forms and fully implemented procedures to ensure that all title insurance policies, applications or claim forms include the required verbiage regarding fraudulent acts and penalties, as required by Colorado insurance law.

In the market conduct examination for the period January 1, 2002 to December 31, 2002, First American was cited for failure to display an anti-fraud statement. The violation resulted in Recommendation #9 of Final Agency Order O-04-183, stating that “The Respondent shall provide evidence that it has modified its procedures to ensure disclosure of the anti-fraud statement in accordance with Colorado insurance law.” Failure to comply with the previous order of the commissioner constitutes a violation of § 10-1-205(3)(a), C.R.S.

**Issue A2: Failure to adopt and implement reasonable standards for claims processing.**

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

...

- (h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

...

- (III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

Colorado Insurance Regulation 1-1-7, promulgated under the authority of § 10-1-109, (1), C.R.S., states in part:

...

Section 3. Definitions

...

D. "Claim records" mean:

- (1) For property and casualty: the notice of claim, claim forms, proof of loss, settlement demands, accident reports, police reports, adjusters logs, claim investigation documentation, inspection reports, supporting bills, estimates and valuation worksheets, correspondence to and from insureds and claimants or their representatives regarding claim, complaint correspondence, copies of claim checks or check numbers and amounts, releases, all applicable notices, and correspondence used for determining and concluding claim payments or denials, subrogation and salvage documentation, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity.

...

Section 12. Records Usually Required For Examination

- G. *Claims practices: policies and procedures*, claims records, claims paid, claims without payment (denied, rejected, incomplete, closed without payment), total loss settlements (salvage), subrogation, litigation, claim forms, reserves, and statistical coding; [Emphasis added.]

First American was not in compliance with Colorado insurance law as its response was inadequate and failed to provide any supportable evidence. First American failed to provide a current claims manual, any memorandums, or any written, oral or other guidelines, directives or procedures for processing claims that would support its assertion that First American has adopted and implemented reasonable standards for processing its claims. When asked to provide a copy of its claims manual, First American responded that it did not have a claims manual, and that its policy is to *“abide by the laws, rules and regulations of the state where the claim is filed and that FA adopted a policy of requiring claims handlers in each state to comply with the claim handling requirement in each state, including Colorado.”*

When First American was asked to provide a copy of the policy it adopted to implement reasonable standards for prompt investigation of claims arising under its insurance policies, it provided a 1999 memorandum eliminating the use of its claims manual for claims handling procedures and practices. First American admitted that it did not possess a current claims manual that outlined First American’s claim processing guidelines. Additionally, the memo that replaced First American’s prior claims manual is outdated and was only sent to First American’s counsel. First American has not satisfied the statutory requirement of § 10-3-1104, C.R.S., as it has failed to produce any identifiable or supportable evidence, of any kind, that would demonstrate it has adopted and implemented reasonable standards for claim processing.

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**Recommendation No. 2:**

Within thirty (30) days of this report, First American shall provide written submission and rebuttal documentation demonstrating why it should not be considered in violation of § 10-3-1104, C.R.S., and Colorado Insurance Regulation 1-1-7. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has adopted and implemented identifiable and quantitative reasonable standards to ensure prompt investigation of claims arising under its insurance policies, as required by Colorado insurance law.

**Issue A3: Failure to require its agents to retain adequate documentation and records in its title underwriting files.**

Section 10-1-102, C.R.S., Definitions, states in part:

...

- (6)(a) “Company”, “corporation”, “insurance company”, or “insurance corporation” includes all corporations, associations, partnerships, or individuals engaged as insurers in the business of insurance, including the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange, or suretyship except fraternal or benevolent orders and societies.

...

- (12) “Insurance” means a contract whereby one, for consideration, undertakes to indemnify another or to pay a specified or ascertainable amount or benefit upon determinable risk contingencies, and includes annuities.
- (13) “Insurer” means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance.

Section 10-11-106, C.R.S., Determination of insurability required, states in part:

- (1) No policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. *Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than seven years after the policy or contract of title insurance has been issued.* [Emphasis added.]

Section 10-11-122, C.R.S., Title commitments, states in part:

...

- (3) Before issuing any title insurance policy, unless the proposed insured provides written instructions to the contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due or other equivalent documentation from the county treasurer of the treasurer’s authorized agent.

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- C. Whenever a title entity provides the closing and settlement service that is in conjunction with its issuance of an owners policy of title insurance, it shall update the title insurance commitment from the date of issuance to as reasonably close to the time of closing as permitted by the applicable county real estate records, which update shall include all impairments of record at the time of closing or as close thereto as permitted by the applicable county real estate records, and the title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title insurance commitment, other than the effective date of the title insurance commitment, for all undisclosed matters that appear of record prior to the time of closing.

...

- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]
- L. *Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.* [Emphasis added.]

First American was not in compliance with Colorado insurance law, as it failed to provide the Division with supportable or identifiable communication to demonstrate First American did indeed require its agents to retain adequate documentation and records in its title underwriting files. First American failed to exercise reasonable efforts to ensure its authorized agents were in compliance with all laws and regulations concerning the business of title insurance.

First American responded to a Division inquiry that, *"from a title standpoint, we require that all agents retain in their files the commitment, policy and survey, items that are not easily duplicated. In other words, anything that can be duplicated or recreated such as the chain of title/search and exam, recorded documents are not required to be retained."* Additionally, First American responded that it, *"instructs its agents that records must be retained in their files, electronic or paper, for a period not less than 7 years."*

When asked to provide documentation on how and when First American communicated instructions to its agents regarding retention of title underwriting files, First American responded that, *"FATIC's protocol for instructing its agents regarding statutory, regulatory and compliance items, including retention of underwrite/title files, is through underwriter communiqués, bulletins, verbally, as necessary or appropriate."* Additionally, First American provided the examiners with Colorado DOI Bulletin B-1.15 Guidelines for Rates, Rules, Loss Cost, and Form Filings Containing Confidential Information and B-1.19 Requirements to File Rates, Forms, Loss Costs and Annual Reports Electronically Through SERFF. The referenced bulletins are unrelated and irrelevant to title underwriting retention of First American agents.

First American failed to provide adequate documentation to demonstrate that it exercised reasonable efforts to communicate to its agents the requirement for agents to retain specific and adequate documentation of compliance with Colorado laws in the agents title underwriting files, for the required length of time. The referenced unrelated and irrelevant Bulletins pertain to rate and form filings with the

Division, do not pertain to title underwriting file retention of First American's agents, and fail to meet the statutory and regulatory requirements of Colorado insurance law.

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**Recommendation No. 3:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of §§ 10-11-106, 10-11-122, C.R.S., and Colorado Insurance Regulation 3-5-1. In the event First American is unable to provide such documentation., it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has developed and disseminated communication to First American's agents regarding the agents responsibility to retain specific and adequate documentation and records in their title underwriting files, for the required length of time, as required by Colorado insurance law.

**Issue A4: Failure to provide adequate agent oversight of privacy protection policy.**

Section 10-2-401, C.R.S., License required, states in part:

- (1) No person shall act as or hold oneself out to be an insurance producer unless duly licensed as an insurance producer in accordance with this article. *Every insurance producer who solicits or negotiates an application for insurance of any kind on behalf of an insurer shall be regarded as representing the insurer and not the insured* or any beneficiary of the insured in any controversy between the insurer and such insured or beneficiary. A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.  
[Emphasis added.]

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.*  
[Emphasis added.]

Colorado Insurance Regulation 6-4-1, promulgated under the authority of §§ 10-1-108, 10-1-109, 10-5-117, 10-16-109 and 10-16-401(4)(o), C.R.S., states in part:

...

Section 4. Definitions

...

- B. (1) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

...

- Q. (1) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of Colorado.

Section 5. Initial Privacy Notice to Consumers Required

A. Initial notice requirement. *A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:*

- (1) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection E of this section; and
- (2) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any non-affiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

First American was not in compliance with Colorado insurance law, as it failed to provide any documentation or supporting evidence that it had procedures in place to ensure the acts of its authorized agents comply with the laws and regulations concerning privacy protection policy disclosures. While First American states it instructs its agents to maintain a Colorado privacy protection policy and adhere to Colorado law, it produced no evidence or documentation that would demonstrate a procedure was in place to ensure its agents complied with these laws and regulations.

When asked for a copy of its privacy procedures, First American responded that, *"FATIC provides agents with its privacy policy and instructs agents that it may use First American's policy or use any part of it in crafting and executing its own policies and practices consistent with Colorado laws. Periodically throughout the year, FATIC reminds agents of their duties and obligations with respect to providing a clear and conspicuous notice that accurately reflects its privacy policies and practices"*

When asked to provide documentation on how and when First American instructed and reminded its agents to comply with the privacy policy during the 2009 examination period, First American responded that, *"FATIC's protocol for instructing its agents regarding statutory, regulatory and compliance items, including privacy policy, is through underwriter communiqués, bulletins, verbally, as necessary or appropriate."* First American failed to provide copies of any such underwriter communiqués or relevant bulletins. First American provided the examiners with Colorado DOI Bulletin B-1.15 Guidelines for Rates, Rules, Loss Cost, and Form Filings Containing Confidential Information and B-1.19 Requirements to File Rates, Forms, Loss Costs and Annual Reports Electronically Through SERFF. The referenced bulletins are unrelated and irrelevant to title underwriting retention of First American agents.

First American has failed to provide any adequate documentation to demonstrate that it exercised reasonable efforts to communicate to its agents the requirement that its agents comply with the privacy policy laws and regulations pertinent to Colorado. The referenced unrelated and irrelevant Bulletins pertain to rate and form filings with the Division, do not pertain to the privacy protection policy disclosure requirements of First American's agents, and fail to meet the statutory and regulatory requirements of Colorado insurance law.



**Recommendation No. 4:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulations 3-5-1 and 6-4-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has developed and disseminated communication to First American's agents regarding the agents responsibility to comply with the privacy protection policy disclosure laws and regulations, as required by Colorado insurance law.

**Issue A5: Failure, in some instances, to ensure producers were duly licensed prior to transacting business on behalf of First American resulting in the transaction of unauthorized insurance, and/or failure to maintain adequate licensing records.**

Section 10-2-401, C.R.S., License required, states in part:

- (1) No person shall act as or hold oneself out to be an insurance producer unless duly licensed as an insurance producer in accordance with this article. Every insurance producer who solicits or negotiates an application for insurance of any kind on behalf of an insurer shall be regarded as representing the insurer and not the insured or any beneficiary of the insured in any controversy between the insurer and such insured or beneficiary. *A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.* [Emphasis added.]

Section 10-2-406, C.R.S., Licensing of agencies, states in part:

- (1) For purposes set forth in section 10-2-701, an insurance agency or business entity shall be licensed as an insurance producer.

Section 10-3-903, C.R.S., Definition of transacting insurance business, state in part:

- (1) Any of the following acts in this state, effected by mail or otherwise, by an unauthorized insurer constitute transacting insurance business in this state as such term is used in section 10-3-105:

...

- (c) The taking or receiving of any application for insurance;

Section 10-11-102, C.R.S., Definitions, states in part:

...

- (9) "Title insurance agent" means a person authorized by a title insurance company to solicit insurance or to collect premiums or to issue or countersign policies in its behalf.
- (10) "Title insurance company" means any domestic company organized under the provisions of this article for the purpose of insuring titles to real property; any title insurance company organized under the laws of another state or foreign nation and licensed to insure titles to real estate within this state; and any domestic, foreign, or alien company having the power and authorized to insure titles to real estate within this state on or before July 1, 1969, and which meets the requirements of this article.

Section 10-11-116, C.R.S., Title insurance agents licensed, states in part:

- (1)(a) Title insurance agents shall be licensed in the manner provided for insurance producers in part 4 of article 2 of this title, except as otherwise provided in

this section.

Colorado Insurance Regulation 1-1-7, promulgated under the authority of § 10-1-109(1), C.R.S., states in part:

...

#### Section 7. Licensing Records

Records to be maintained relating to the insurer's compliance with licensing requirements shall include the licensing records of each producer associated with the insurer. *Licensing records shall be maintained so as to show clearly the status of the producer at the time the application was taken as well as the dates of the appointment and termination of each producer. A screen print from the NAIC Producer Database (PDB) or the Colorado Division of Insurance Database may serve to provide adequate proof only of an agent's current licensing status.* [Emphasis added.]

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

#### Section 7. Rules Regarding Consumer Protections

...

- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]

In some instances, First American was not in compliance with Colorado insurance law, as its records failed to contain documentation that First American had verified its producers, (both agents and employees), were licensed prior to transacting business on First American's behalf. First American was unable to provide licensing records that reflected the status of the producer during the examination period for five (5) of its forty (40) authorized agents and eight (8) of its nineteen (19) direct operation employees required to be licensed. While First American did provide some licensing information for its agents and employees, the files listed herein as exceptions included only the screen print for the current year (2010). The files failed to include any documentation that would clearly demonstrate First American had verified or maintained documentation of the licensing information during the 2009 exam period.

Additionally, four (4) of First American's forty (40) authorized agents did not have a valid Colorado insurance producer license for a portion of the exam period. First American allowed the unlicensed agents to transact business, resulting in unauthorized insurance. The transaction of title business by unlicensed agents was confirmed by reviewing the list of title policies sold during the examination period which documented numerous title transactions that were conducted by agents that were not licensed at the time of the transaction.

**Licensing Records**

Population	Sample Size	Number of Exceptions	Total Error Rate
40 Agents	40	5	12%
19 Employees	19	8	42%

**Recommendation No. 5:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of §§ 10-2-401, 10-2-406, 10-11-116, C.R.S., and Colorado Insurance Regulation 1-1-7. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure that it verifies the license status of all producers prior to transacting business on behalf of First American, maintains documentation of such verification in its files, and has implemented procedures to ensure that First American's agents comply with licensing requirements, as required by Colorado insurance law.

**RATES**

**Issue F1: Failure, in some instances, to charge rates in accordance with the rates on file with the Commissioner.** *(The examiners find this to be a repeat of prior issue B in the findings of the market conduct examination report for calendar year 2002.)*

Section 10-3-1104, C.R.S., Unfair methods of competition - unfair or deceptive acts or practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

...

- (f) Unfair discrimination:

- (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-11-118, C.R.S., Title insurance, effective August 2, 2001, states in part:

- (1) Title insurance rates and fees shall be regulated in the manner provided in part 4 of article 4 of this title, except as otherwise provided in this section.
- (2)(a) Every title insurance company and title insurance agent shall have on file in the company's or agent's principal office within the state:
- (I) The schedule of rates, fees, and every amendment thereto, including the effective date of the schedule amendment;
- (II) A statement of compliance by an officer of the title insurance company or the title insurance agent that to the best of the officer's knowledge each rate or fee in use complies with Colorado law; and
- (III) Information or supporting documentation that demonstrates compliance with section 10-4-403.
- (b) Prior to the effective date of any new or amended rate or fee, every title insurance company and title insurance agent shall file with the commissioner such new or amended rate. Such filing shall not include the information or supporting documentation described in paragraph (a) of this subsection (2). Every title insurance company and title insurance agent shall make available upon request to the commissioner the statement of compliance and all information or supporting documentation referred to in paragraph (a) of this subsection (2).
- (c) No title insurance company or title insurance agent shall use any rate or fee in the business of title insurance prior to its effective date, and no rate or fee

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increase or decrease shall apply to title policies or services that have been contracted for prior to such effective date. All such rates or fees shall be readily available to the public in each office of the title insurance company or title insurance agent in the county to which said rates or fees apply.

Section 10-11-118, C.R.S., Title insurance - rules, effective August 5, 2009, states in part:

- (1) Title insurance rates and fees shall be regulated in the manner provided in part 4 of article 4 of this title.
- (2) Prior to the effective date of any new or amended rate or fee, every title insurance company and title insurance agent shall file with the commissioner the new or amended rate or fee, with justification for the new or amended rate or fee. Each filing shall set forth its effective date, which shall be no earlier than thirty days after its receipt by the commissioner. The commissioner may promulgate rules to implement this subsection (2).
- (3) No title insurance company or title insurance agent shall use any rate or fee in the business of title insurance prior to its effective date, and no rate or fee increase or decrease shall apply to title policies or services that have been contracted for prior to such effective date. All rates or fees shall be readily available to the public in each office of the title insurance company or title insurance agent in the county to which said rates or fees apply.

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

**Section 5. Rules Regarding Rates and Fees**

...

- D. No rate or fee can be charged unless it is on the currently effective schedule at the time that the commitment and/or policy or closing and settlement service is contracted.
- E. Schedules shall not apply to title commitments and/or policies or closing and settlement services contracted for prior to the effective date of such schedule.
- F. No title entity shall quote any rate or fee or closing and settlement service charge to any person which is more or less than that currently available to others for the same type of title policy or service in a like amount, covering property in the same county and involving the same factors as set forth in its then current schedule of rates and fees.

**Section 6. Rules Regarding Standards Of Conduct For Title Insurance Entities**

...

- A. The Following is a partial, but not all-inclusive, list of acts and practices which the Division considers per se unlawful inducements proscribed by § 10-11-108, C.R.S.:

...

8. Charging less than the scheduled rate or fee for a specified title or closing and settlement service, or for a policy of title insurance.

**Section 7. Rules Regarding Consumer Protections**

...

- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.*  
[Emphasis added.]

In some instances, First American was not in compliance with Colorado insurance law, as sixty-four (64) of 116 policy files, randomly selected from a total population of 18,984 policies, contained incorrect rates for policy and/or endorsement premiums compared to the rates on file with the Division.

Some files reviewed contained more than one rating error, however, each file was considered as a singular error regardless of the number of errors contained in the file.

**Premium Rating**

Population	Sample Size	Number of Exceptions	Total Error Rate
18,984	116	64	55%

The following chart contains a breakdown of the finding by coverage:

Type of Coverage	Sample Size	Number of Exceptions	Files Over Charge	Files Under Charge	Total Amount Over	Total Amount Under	Percentage of Sample
Owner's	63	32	14	18	\$682.00	\$673.50	51%
Lender's	96	24	11	13	\$843.57	\$799.70	25%
Endorsements	73	35	10	25	\$190.88	\$481.80	48%

**Recommendation No. 6:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of § 10-11-118, C.R.S., and Colorado Insurance Regulation 3-5-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that all title policy and endorsement charges are issued with premium determinations that are consistent with filed rates, as required by Colorado insurance law.



In the market conduct examination for the period January 1, 2002 to December 31, 2002, First American was cited for failure to use filed rates. The violation resulted in Recommendation #10 of Final Agency Order O-04-183, stating that “The Respondent shall provide evidence that it has reviewed its procedures to ensure use of filed rates in accordance with Colorado insurance law.” Failure to comply with the previous order of the commissioner constitutes a violation of § 10-1-205, C.R.S.

**NEW BUSINESS**

<b>Issue G1: Failure, in some instances, to conduct, preserve and retain in title files a reasonable examination of the title.</b>
--

Section 10-1-102, C.R.S., Definitions, states in part:

...

- (6)(a) “Company”, “corporation”, “insurance company”, or “insurance corporation” includes all corporations, associations, partnerships, or individuals engaged as insurers in the business of insurance, including the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange, or suretyship except fraternal or benevolent orders and societies.

Section 10-11-106, C.R.S., Determination of insurability required, states in part:

- (1) No policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies.  
*Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than seven years after the policy or contract of title insurance has been issued. . . [Emphasis added.]*

Colorado Insurance Regulation 1-1-7, promulgated under the authority of § 10-1-109(1), C.R.S., states in part:

...

#### Section 4. Records Required For Market Conduct Purposes

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim’s practices, rating, underwriting . . .
- B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all the work papers and written communications in the producer’s possession pertaining to the documented policy.

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

#### Section 7. Rules Regarding Consumer Protections

...

- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]
- L. *Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.* [Emphasis added.]

In some instances, First American was not in compliance with Colorado insurance law, as forty-three (43) of 116 policy files, randomly selected from a total population of 18,984 policies, failed to contain evidence of a reasonable examination of the title.

**Reasonable Examination**

Population	Sample Size	Number of Exceptions	Total Error Rate
18,984	116	43	37%

**Recommendation No. 7:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of § 10-11-106, C.R.S. and Colorado Insurance Regulations 1-1-7 and 3-5-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure that a reasonable title examination has been conducted, preserved and maintained in its files, as required by Colorado insurance law.

<b>Issue G2: Failure, in some instances, to obtain a certificate of taxes due or written instructions eliminating the requirement from the proposed insured.</b>
--

Section 10-11-122, C.R.S., Title commitments, states in part:

...

- (3) Before issuing any title insurance policy, unless the proposed insured provides written instructions to the contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due or other equivalent documentation from the county treasurer or the county treasurer's authorized agent.

Colorado Insurance Regulation 1-1-7, promulgated under the authority of § 10-1-109(1), C.R.S., states in part:

...

#### Section 4. Records Required For Market Conduct Purposes

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting ...
- B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all the work papers and written communications in the producer's possession pertaining to the documented policy.

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

#### Section 7. Rules Regarding Consumer Protections

...

- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]
- L. *Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.* [Emphasis added.]

In some instances, First American was not in compliance with Colorado insurance law, as twenty-nine (29) of 116 policy files, randomly selected from a total population of 18,984 policies, failed to contain evidence that a certificate of taxes due, or written instructions from the proposed insured eliminating such requirement, had been obtained prior to issuing the title policy.

**Tax Certificate**

Population	Sample Size	Number of Exceptions	Total Error Rate
18,984	116	29	25%

**Recommendation No. 8:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of §§ 10-11-122., C.R.S. and Colorado Insurance Regulations 1-1-7 and 3-5-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure that a certificate of taxes due, or instructions eliminating the requirement, is obtained and retained prior to issuance of the title policy, as required by Colorado insurance law.

**Issue G3: Failure, in some instances, to provide evidence of the special taxing district disclosure.**

Section 10-11-122, C.R.S., Title commitments, states in part:

- (1) Every title insurance agent or title insurance company shall provide, along with each title commitment issued for the sale of residential real property as defined in section 39-1-102 (14.5), C.R.S. a statement disclosing the following information:
  - (a) That the real subject may be located in a special taxing district;
  - (b) That a certificate of taxes due listing each taxing jurisdiction shall be obtained from the county treasurer or the county treasurer's authorized agent;
  - (c) That information regarding special districts and the boundaries of such districts may be obtained from the board of county commissioners, the county clerk and recorder, or the county assessor.
- (2) Failure of a title insurance agent or title insurance company to provide the statement required by subsection (1) of this section shall subject such agent or company to the penalty provisions of section 10-3-111 but shall not affect or invalidate any provisions of the commitment for title insurance.
- (3) Before issuing any title insurance policy, unless the proposed insured provides written instructions to the contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due or other equivalent documentation from the county treasurer or the county treasurer's authorized agent.

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.*  
[Emphasis added.]
- L. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.

The examiners selected a random sample of 116 policy files, which includes both sale and refinance transactions. Of those, sixty-three (63) files contained owner's policies that were subject to the special taxing district disclosure requirement.

In some instances, First American was not in compliance with Colorado insurance law, as eight (8) of the sixty-three (63) owner's policy files that required the disclosure, failed to contain evidence that the special taxing district disclosure had been provided.

**Special Taxing District Disclosure**

Population	Sample Size	Owner's Policies	Number of Exceptions	Total Error Rate
18,984	116	63	8	13%

**Recommendation No. 9:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of § 10-11-122, C.R.S. and Colorado Insurance Regulation 3-5-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure that the special taxing district disclosure is provided with each title commitment issued for the sale of residential real property, as required by Colorado insurance law.



**Issue G4: Failure, in some instances, to provide evidence that the Gap disclosure had been provided.**

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- D. As soon as reasonably practical prior to closing, every title entity shall notify in writing every prospective insured under an owner's title insurance commitment the circumstances under which the title insurance company is responsible for all matters which appear of record prior to the time of recording (commonly referred to as "Gap Coverage"). This notice shall be clear and conspicuous, reasonably understandable, and designed to call attention to its nature and significance.

...

- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]

- L. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.

The examiners selected a random sample of 116 policy files, which included both sale and refinance transactions. Of those, sixty-three (63) files contained owner's policies that were subject to the Gap disclosure requirement.

In some instances, First American was not in compliance with Colorado insurance law, as eleven (11) of the sixty-three (63) owner's policy files that required the disclosure, failed to contain evidence that the Gap disclosure had been provided.

**Gap Disclosure**

Population	Sample Size	Owner's Policies	Number of Exceptions	Total Error Rate
18,984	116	63	11	17%

**Recommendation No. 10:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 3-5-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure that the Gap disclosure is provided with each title commitment issued for an owner's title insurance commitment, as required by Colorado insurance law.

<b>Issue G5: Failure, in some instances, to provide evidence that the severed mineral estate disclosure had been provided.</b>
--

Section 10-11-123, C.R.S., Notification of severed mineral estates, states in part:

- (1) For purposes of this section:
  - (a) "Mineral estate" means a mineral interest in real property.
  - (b) "Severed" means that the surface owner does not own all or any part of the mineral estate.
  - (c) "Surface estate" means an interest in real property that does not include the full mineral estate as shown by recorded documents that impart constructive notice in the office of the clerk and recorder of the county in which the real property is situated.
  - (d) "Surface owner" means the owner of the surface estate and any purchaser with rights under a contract to purchase all or part of the surface estate.
- (2) A title insurance agent or title insurance company shall provide, as part of each title commitment for the issuance of an owner's title insurance policy, the following written statement when it is determined that a mineral estate has been severed from the surface estate:
  - (a) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
  - (b) That such mineral estate may include the right to enter and use the property without the surface owner's permission.
- (3) In determining compliance with this section, a title insurance agent or title insurance company may rely on recorded documents that impart constructive notice in the office of the clerk and recorder of the county in which the real property is situated and shall not be liable for any errors or omissions in such records.
- (4) A title insurance company or title insurance agent may rely on any document purporting to sever mineral interests to act as notice of such severance when such document is recorded in the office of the county clerk and recorder in the county in which the real property is situated.
- (5) A title insurance agent or title insurance company shall be deemed to be in compliance with this section when it relies on any document purporting to sever mineral interests or to act as notice of such severance when such document is recorded in the office of the county clerk and recorder of the county in which the real property is situated. No title insurance agent or title insurance company shall be liable for obligations above, or for an amount in excess of, those stated in the owner's policy of title insurance issued pursuant to the commitment for failure to

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comply with the provision of subsection (2) of this section.

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.*  
[Emphasis added.]

L. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.

The examiners selected a random sample of 116 policy files, which included both sale and refinance transactions. Of those, sixty-three (63) files contained owner's policies. Additionally, thirty-two (32) of those owner's policies were subject to the severed mineral estate disclosure requirement.

In some instances, First American was not in compliance with Colorado insurance law, as six (6) of the thirty-two (32) owner's policy files that required the disclosure, failed to contain evidence that the severed mineral estate disclosure had been provided.

**Mineral Estate Disclosure**

Population	Sample Size	Owner's Policies	Owner's Policies Requiring Disclosure	Number of Exceptions	Total Error Rate
18,984	116	63	32	6	19%

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**Recommendation No. 11:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of § 10-11-123, C.R.S. and Colorado Insurance Regulation 3-5-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure that the severed mineral estate disclosure is provided with each title commitment issued for an owner's title insurance policy, when it is determined that a mineral estate has been severed from the surface estate, as required by Colorado insurance law.

**Issue G6: Failure, in some instances, to provide evidence that the mechanic's lien disclosure had been provided.**

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- J. Each Title Entity shall notify in writing, at the time of delivery of the title insurance commitment, every prospective insured in an owner's title insurance commitment for a single family residence (including a condominium or townhouse unit) of that title entity's general requirements for the deletion of an exception or exclusion to coverage relating to unfilled mechanics or materialmans liens, except when said coverage or insurance is extended to the insured under the terms of the policy. This notice shall be clear and conspicuous, reasonably understandable, and designed to call attention to its nature and significance. Notwithstanding the foregoing, nothing contained in this Section 7(I) [sic] shall be deemed to impose any requirement upon any title insurance company to provide mechanics or materialmans lien coverage.
- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]
- L. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.

The examiners selected a random sample of 116 policy files, which includes both sale and refinance transactions. Of those, sixty-three (63) files contained owner's policies that were subject to the mechanic's lien disclosure requirement.

In some instances, First American was not in compliance with Colorado insurance law, as eleven (11) of the sixty-three (63) owner's policy files, that required the disclosure, did not contain evidence that the mechanic's lien disclosure had been provided.

**Mechanic's Lien Disclosure**

Population	Sample Size	Owner's Policies	Number of Exceptions	Total Error Rate
18,984	116	63	11	17%

**Recommendation No. 12:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 3-5-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure that the mechanic's lien disclosure is provided with each title commitment issued for an owner's title insurance policy, as required by Colorado insurance law.

<b>Issue G7: Failure, in some instances, to provide evidence that the privacy disclosure had been provided.</b>
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Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.*  
[Emphasis added.]

L. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.

Colorado Insurance Regulation 6-4-1, promulgated under the authority of §§ 10-1-108, 10-1-109, 10-5-117, 10-16-109 and 10-16-401(4)(o), C.R.S., states in part:

...

Section 4. Definitions

...

B. (1) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

...

Q. (1) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of Colorado.

Section 5. Initial Privacy Notice to Consumers Required

B. Initial notice requirement. *A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:*  
[Emphasis added.]

- (2) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection E of this section; and
- (3) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any non-affiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

In some instances, First American was not in compliance with Colorado insurance law, as twenty-four (24) of 116 policy files, randomly selected from a total population of 18,984 policies, failed to contain evidence of a privacy disclosure.

**Privacy Disclosure**

Population	Sample Size	Number of Exceptions	Total Error Rate
18,984	116	24	21%

**Recommendation No. 13:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulations 3-5-1 and 6-4-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure that the privacy disclosure is provided, as required by Colorado insurance law.



**Issue G8: Failure, in some instances, to provide evidence of an update of the title commitment, when First American's agent or direct operation provided closing and settlement services, in conjunction with the issuance of an owner's policy of title insurance.**

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

C. *Whenever a title entity provides the closing and settlement service that is in conjunction with its issuance of an owners policy of title insurance, it shall update the title insurance commitment from the date of its issuance to as reasonably close to the time of closing as permitted by the applicable county real estate records, which update shall include all impairments of record at the time of closing or as close thereto as permitted by the applicable county real estate records, and the title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title insurance commitment, other than the effective date of the title insurance commitment, for all undisclosed matters which appear of record prior to the time of closing. [Emphasis added.]*

...

K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance. [Emphasis added.]*

L. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.

The examiners selected a random sample of 116 policy files, which included both sale and refinance transactions. Of those, sixty-three (63) files contained owner's policies. Closing and settlement services were provided by First American's agents or direct operation in thirty-five (35) of the sixty-three (63) files in the sample.

In some instances, First American was not in compliance with Colorado insurance law, as nineteen (19) of the thirty-five (35) owner's policy files, where First American's agent or direct operation provided closing and settlement services, failed to contain evidence of an update of the title commitment.

**Owner's Title Commitment Update**

Population	Sample Size	Owner's Policy Closed by Agent or Direct Op	Number of Exceptions	Total Error Rate
18,984	116	35	19	54%

**Recommendation No. 14:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 3-5-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure evidence of an update to the commitment, where First American's agent or direct operation provided closing and settlement services in conjunction with the issuance of an owner's policy of title insurance, as required by Colorado insurance law.

**Issue G9: Failure, in some instances, to provide evidence of written instructions, from all necessary parties, when First American's agent or direct operation provided closing and settlement services.**

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

H. *No title entity shall provide closing and settlement services without receiving written instructions from all necessary parties.* In the event all parties to the real estate transaction execute written closing instructions, including those closing instructions approved by the Colorado Real Estate Commission, and such closing instructions have been delivered to the title entity in advance of the closing and settlement, the title entity shall also execute such closing instructions and furnish copies to all parties to the closing instructions, to the extent allowed by law. Nothing in this provision shall prohibit amendments to existing closing instructions. [Emphasis added.]

...

K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]

L. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.

The examiners selected a random sample of 116 policy files from a population of 18,984 title policies written during the examination period. The files in the sample included transactions where closing and settlement services were provided as well as files where those services were not provided. Closing and settlement services were provided by First American's agents or direct operation in seventy (70) of the 116 files in the sample.

In some instances, First American was not in compliance with Colorado insurance law, as thirteen (13) of the seventy (70) policy files where First American's agent or direct operation provided closing and settlement services, failed to contain evidence of written instructions from all necessary parties.

**Written Instructions**

Population	Sample Size	Closed by Agent or Direct Op	Number of Exceptions	Total Error Rate
18,984	116	70	13	19%

**Recommendation No. 15:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 3-5-1. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has implemented procedures to ensure evidence of written instructions from all necessary parties, where First American's agent or direct operation provides closing and settlement services, as required by Colorado insurance law.

**Issue G10: Failure, in some instances, to require the agents to remit premiums within the required contractual time period.**

Section 10-2-704, C.R.S., Fiduciary responsibilities, states in part:

- (1)(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.
- (b) All premiums received, less commissions if authorized, *shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.* [Emphasis added.]
- ...
- (d) If any insurance producer has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for more than forty-five days after the contractual due date or, if there is no contractual due date, more than ninety days after receipt, *the insurer or its agent shall promptly report such failure to the commissioner in writing.* [Emphasis added.]

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]

In some instances, First American was not in compliance with Colorado insurance law, as the premium was not remitted within the required contractual time period for forty-five (45) of 116 policy files, randomly selected from a total population of 18,984 policies.

**Premium Remittance**

Population	Sample Size	Number of Exceptions	Total Error Rate
18,984	116	45	39%

**Recommendation No. 16:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of § 10-2-704, C.R.S. and Colorado Insurance Regulation 3-5-1. In the event First American is unable to provide such documentation it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure timely remittance of premium, as required by Colorado insurance law.

<b>Issue G11: Failure, in some instances, to report to the Commissioner any remittance that exceeded forty-five (45) days beyond the contractual due date.</b>
--

Section 10-2-704, C.R.S., Fiduciary responsibilities, states in part:

- (1)(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.
- (b) All premiums received, less commissions if authorized, *shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.* [Emphasis added.]
- ...
- (d) If any insurance producer has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for more than forty-five days after the contractual due date or, if there is no contractual due date, more than ninety days after receipt, *the insurer or its agent shall promptly report such failure to the commissioner in writing.* [Emphasis added.]

Colorado Insurance Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-11-124(2) and 10-4-404(1), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- K. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]

In some instances, First American was not in compliance with Colorado insurance law as the Company failed to report to the Commissioner in writing, twenty-five (25) cases in which the premium remittance exceeded forty-five (45) days after the contractual due date. These twenty-five (25) files pertained to ten (10) different agents. No evidence or documentation was located or provided, which would demonstrate the failure of these ten (10) agents to remit premium timely was reported to the commissioner in writing, as required by Colorado insurance law.

**Premium Remittance Reporting**

Population	Sample Size	Late Premium Remittances	Number of Exceptions	Total Error Rate
18,984	116	45	25	56%

**Recommendation No. 17:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of § 10-2-704, C.R.S. and Colorado Insurance Regulation 3-5-1. In the event First American is unable to provide such documentation it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to ensure untimely remittance of premium is timely reported to the Commissioner as required by Colorado insurance law.



<b>Issue G12: Failure, in some instances, to maintain and provide records required for a market conduct examination.</b>
--

Colorado Insurance Regulation 1-1-7, promulgated under the authority of § 10-1-109(1), C.R.S., states in part:

...

**Section 4. Records Required For Market Conduct Purposes**

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, .... Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.
- B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all work papers and written communications in the producer's possession pertaining to the documented policy.

**Section 5. Policy Records**

- A. The following records shall be maintained: A policy record shall be maintained for each policy issued. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. If a policy is terminated, either by the insurer or the policyholder, documentation supporting the termination and account records indicating a return of premiums, if any, shall also be maintained. Policy records need not be segregated from the policy records of other states so long as the records are readily available to market conduct examiners as required under this regulation.
- B. Policy records shall include at least the following:
  - (1) The actual, completed application for each contract, where applicable;
    - (a) The application shall bear the signature, either written or digitally authenticated, where required, of the applicant whenever the insurer intends to retain any right to contest any warranty, representation or condition contained in the application; or
    - (b) The application shall bear a clearly legible means by which an examiner can identify a producer involved in the transaction. The examiners shall be provided with any information needed to determine the identity of the producer;

- (2) Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, any termination notices, and any written or electronic correspondence to or from the insured pertaining to the coverage. A separate copy of the record need not be maintained in the individual policy to which the record pertains, provided it is clear from the insurer's other records or systems that the record applies to a particular policy and that any data contained in the record relating to that policy, as well as the actual policy, can be retrieved or recreated;
- (3) Any binder with terms and conditions that differ from the terms and conditions of the policy subsequently issued; and
- (4) Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, and claims handling of the policy. Presentation at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. If a rating, underwriting, or claims handling record is computer based, the records used to input the information into the computer system shall also be available to the examiners. These types of records include, but are not limited to, the application, where applicable, the policy form including any amendments or endorsements, rating manuals, underwriting rules, credit reports or scores, claims history reports, previous insurance coverage reports, e.g., MIB questionnaires, internal reports, loans and underwriting and rating notes.

In some instances, First American was not in compliance with Colorado insurance law, as seventy-five (75) of 116 policy files, randomly selected from a total population of 18,984 policies, were missing information and/or documentation required to be maintained in the file. The following is a summary of the findings:

**Policy Files Missing Documentation**

<b>Information/Documentation Missing</b>	<b>Number of Exceptions</b>
Policy Jacket	23
Policy	1
Title Commitment	3
Information to calculate premium rate	19
Examiner information for licensing and authorization	16
Date policy produced/issued	17
Endorsements and corresponding charge	3
Premium payment received or receipt/disbursement information	16
C-3 referenced in commitment	2

Some files were missing more than one required item; however, each file was considered as a singular exception regardless of the number of items missing from the file.

**Policy Documentation**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Total Error Rate</b>
18,984	116	75	65%

**Recommendation No. 18:**

Within thirty (30) days of this report, First American shall provide written submission and rebuttal documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 1-1-7. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to maintain appropriate policy file records, as required by Colorado insurance law.

**CLAIMS**

**Issue J1: Failure, in some instances, to include the initial date of receipt, date-stamped by the insurer on documents in claims files as required for a market conduct examination.**

Colorado Insurance Regulation 1-1-7, promulgated under the authority of § 10-1-109, (1), C.R.S., states in part:

...

### Section 3. Definitions

...

D. "Claim records" mean:

...

- (2) For property and casualty: the notice of claim, claim forms, proof of loss, settlement demands, accident reports, police reports, adjusters logs, claim investigation documentation, inspection reports, supporting bills, estimates and valuation worksheets, correspondence to and from insureds and claimants or their representatives regarding claim, complaint correspondence, copies of claim checks or check numbers and amounts, releases, all applicable notices, and correspondence used for determining and concluding claim payments or denials, subrogation and salvage documentation, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity.

### Section 4. Records Required For Market Conduct Purposes

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, ...

...

### Section 6. Claim Records

The claim records shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim records shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed.

...

- B. *Documents in a claim record received from an insured, the insured's agent, a claimant, the department or any other insurer shall bear the initial date of receipt date-stamped by the insurer in a legible form in ink, an electronic format, or some other permanent manner.* Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped

on a document will be considered the initial date of receipt... [Emphasis added.]

In some instances, First American was not in compliance with Colorado insurance law, as twelve (12) of 107 claim files, randomly selected from a total population of 1,818 claims, were missing the initial date of receipt, stamped by the insurer, on the notice of claim form required for that claim.

The examiners used the date First American provided in the acknowledgement letter to determine the date the claim was received.

**Claims – Date Stamp**

Population	Sample Size	Number of Exceptions	Total Error Rate
1,818	107	12	11%

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**Recommendation No. 19:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 1-1-7. In the event First American is unable to provide such documentation, it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to include the initial date of receipt, stamped by the insurer on notice of claim documents in claims files, as required by Colorado insurance law.

<b>Issue J2: Failure, in some instances, to maintain and provide claim records required for a market conduct examination.</b>
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Colorado Insurance Regulation 1-1-7, promulgated under the authority of § 10-1-109, (1), C.R.S., states in part:

...

Section 3. Definitions

...

D. "Claim records" mean:

...

- (3) For property and casualty: the notice of claim, claim forms, proof of loss, settlement demands, accident reports, police reports, adjusters logs, claim investigation documentation, inspection reports, supporting bills, estimates and valuation worksheets, correspondence to and from insureds and claimants or their representatives regarding claim, complaint correspondence, copies of claim checks or check numbers and amounts, releases, all applicable notices, and correspondence used for determining and concluding claim payments or denials, subrogation and salvage documentation, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity.

Section 4. Records Required For Market Conduct Purposes

- B. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, ....

...

Section 6. Claim Records

The claim records shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim records shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed.

- A. The record shall include at least the notification of claim, proof of loss, (or other form of claim submission) claim forms, proof of claim payment check or draft, notes, contract, declaration pages, information on type of coverage, endorsements or riders, work papers, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment or denial of the claim, and any claim manuals or other information necessary for reviewing the claim. Where

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a particular document pertains to more than one record, insurers may satisfy the requirements of this paragraph by making available, at the site of a market conduct examination, a single copy of each document.

In some instances, First American was not in compliance with Colorado insurance law, as seventeen (17) of 107 claim files, randomly selected from a total population of 1,818 claims, were missing one or more documents required to be retained in each claim record. The following is a summary of the findings:

**Claim Files Missing Documentation**

<b>Information/Documentation Missing</b>	<b>Number of Exceptions</b>
Notice of Claim	2
Claim Acknowledgement Letter	4
Policy	9
Disposition/Closure Letter	9

Some files were missing more than one required item; however, each file was considered as a single exception regardless of the number of items missing from the file.

**Claims – Documentation**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Total Error Rate</b>
1,818	107	17	16%

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**Recommendation No. 20:**

Within thirty (30) days of this report, First American shall provide written submissions and rebuttal documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 1-1-7. In the event First American is unable to provide such documentation it shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has fully implemented procedures to maintain claims records, as required by Colorado insurance law.



SUMMARY OF ISSUES AND RECOMMENDATIONS	Rec. No.	Page No.
<b>COMPANY OPERATIONS AND MANAGEMENT</b>		
<b>Issue A1: Failure to provide an anti-fraud statement as required by Colorado insurance law. (The examiners find this to be a repeat of prior issue A in the findings of the market conduct examination report for calendar year 2002.)</b>	1	17
<b>Issue A2: Failure to adopt and implement reasonable standards for claims processing.</b>	2	19
<b>Issue A3: Failure to require its agents to retain adequate documentation and records in its title underwriting files.</b>	3	22
<b>Issue A4: Failure to provide adequate agent oversight of privacy protection policy.</b>	4	25
<b>Issue A5: Failure, in some instances, to ensure producers were duly licensed prior to transacting business on behalf of First American resulting in the transaction of unauthorized insurance, and/or failure to maintain adequate licensing records.</b>	5	28
<b>RATES</b>		
<b>Issue F1: Failure, in some instances, to charge rates in accordance with the rates on file with the Commissioner. (The examiners find this to be a repeat of prior issue B in the findings of the market conduct examination report for calendar year 2002.)</b>	6	32
<b>NEW BUSINESS</b>		
<b>Issue G1: Failure, in some instances, to conduct, preserve and retain in title files a reasonable examination of the title.</b>	7	36
<b>Issue G2: Failure, in some instances, to obtain a certificate of taxes due or written instructions eliminating the requirement from the proposed insured.</b>	8	38
<b>Issue G3: Failure, in some instances, to provide evidence of the special taxing district disclosure.</b>	9	40
<b>Issue G4: Failure, in some instances, to provide evidence that the Gap disclosure had been provided.</b>	10	42
<b>Issue G5: Failure, in some instances, to provide evidence that the severed mineral estate disclosure had been provided.</b>	11	44
<b>Issue G6: Failure, in some instances, to provide evidence that the mechanic's lien disclosure had been provided.</b>	12	46
<b>Issue G7: Failure, in some instances, to provide evidence that the privacy disclosure had been provided.</b>	13	48
<b>Issue G8: Failure, in some instances, to provide evidence of an update of the title commitment, when First American's agent or direct operation provided closing and settlement services, in conjunction with the issuance of an owner's policy of title insurance.</b>	14	50
<b>Issue G9: Failure, in some instances, to provide evidence of written instructions, from all necessary parties, when First American's agent or direct operation provided closing and settlement services.</b>	15	52
<b>Issue G10: Failure, in some instances, to require the agents to remit</b>	16	54

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premiums within the required contractual time period.		
<b>Issue G11:</b> Failure, in some instances, to report to the Commissioner any remittance that exceeded forty-five (45) days beyond the contractual due date.	17	56
<b>Issue G12:</b> Failure, in some instances, to maintain and provide records required for a market conduct examination.	18	59
<b>CLAIMS</b>		
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<b>Issue J2:</b> Failure, in some instances, to maintain and provide claim records required for a market conduct examination.	20	64

**Examination Report Submission**

**State Market Conduct Examiners**

**Jeffory A. Olson, CIE, MCM, FLMI, AIRC, ALHC**

**And**

**Christine M. Nelson**

**Submit this report on this 8th day of July, 2011, on behalf of:**

**The Colorado Division of Insurance  
1560 Broadway, Suite 850  
Denver, Colorado 80202**